



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

Julie Fedorchak  
Randy Christmann  
Brian P. Kalk

Executive Secretary  
Darrell Nitschke

600 East Boulevard, Dept. 408  
Bismarck, North Dakota 58505-0480  
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8 September 2015

Robert Ferebee  
8447 2<sup>nd</sup> St. SW  
Halliday, ND 58636  
[ferebee@ndsupernet.com](mailto:ferebee@ndsupernet.com)

*sent via electronic mail only*

Re: Dakota Access Pipeline Project, Siting Application, Case No. PU-14-842

Dear Mr. Ferebee:

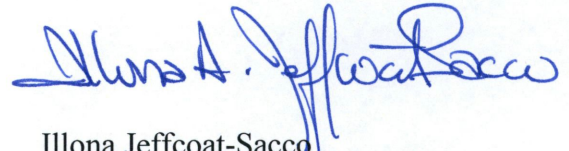
Thank you for your 4 September 2015 e-mail communication to Commissioner Christmann and Commissioner Kalk, and the general Public Service Commission e-mail address, concerning the captioned case. I have been asked to respond to you. A copy of your communication is attached.

Under North Dakota Century Code section 28-32-37 (copy attached), your e-mail constitutes a prohibited *ex parte* communication. Under subsection six of that section, any *ex parte* communication received must be placed on the record for the case and copies must be provided to other parties and other interested persons allowed to participate in the proceeding. Under the same subsection, these parties and persons must be advised that the matter has been placed on the record and that any person desiring to rebut the *ex parte* information may do so, if a request to do so is made to the Commission within 10 days after notice of the communication.

Consequently, I am copying Darrell Nitschke, Director of Administration with the Public Service Commission, as well as the Administrative Law Judge, and the attorneys for the applicant and the intervenors with this response and the attachments, including your original communication. I am asking Mr. Nitschke to file your communication and this response in the docket for the captioned case, and add the communication to the record for the case. This letter with attachments copied to the applicant and intervenors constitutes notice of the *ex parte* communication required by statute.

If you have further questions, please let me know.

Sincerely,



Illona Jeffcoat-Sacco  
General Counsel

cc /w attachments: Tyler Bakke ([tbakke@mcgeelaw.com](mailto:tbakke@mcgeelaw.com))  
Brian Bjella ([bbjella@crowleyfleck.com](mailto:bbjella@crowleyfleck.com))  
Derrick Braaten ([derrick@baumstarkbraaten.com](mailto:derrick@baumstarkbraaten.com))  
Bryan Giese ([giese.law@lawyer.com](mailto:giese.law@lawyer.com))  
Matt Kelly ([mkelly@lawmt.com](mailto:mkelly@lawmt.com))  
Wade Mann ([wmann@nd.gov](mailto:wmann@nd.gov))  
Darrell Nitschke ([dnitschk@nd.gov](mailto:dnitschk@nd.gov))  
Zachary Pelham ([zep@pearce-durick.com](mailto:zep@pearce-durick.com))  
Bryan Van Grinsven ([bvangrinsven@mcgeelaw.com](mailto:bvangrinsven@mcgeelaw.com))

## **Christmann, Randel D.**

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**From:** Bob & Amy Ferebee <ferebee@ndsupernet.com>  
**Sent:** Friday, September 04, 2015 9:08 AM  
**To:** -Info-Public Service Commission; Kalk, Brian P.; Christmann, Randel D.  
**Subject:** eminent domain  
**Attachments:** Scan0035.pdf

Dear Commissioners,

This letter that Dakota Access will be filing eminent domain is very disturbing. At the hearing in Killdeer they said that their agents never mentioned eminent domain and they would work with all the landowners. Dakota Access has not contacted me since the hearing in Killdeer and with the promise in this letter that they would contact me in a week is not true also. We here in North Dakota can NOT do deals on a handshake like we used to, especially when companies such as these do not even do what they promise at public hearings and what they send to people in writing.

Appreciate your support on this and hope you can make this company do what they promise.

Robert Ferebee  
8447 2nd St SW  
Halliday, ND 58636  
701-260-4772

August 28<sup>th</sup>, 2015

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**  
**RETURN MAIL RECEIPT NUMBER: 7015 0640 0005 0212 6331**

Robert Ferebee  
8447 2<sup>nd</sup> Street Southwest  
Halliday, ND 58636

Re: Dakota Access Pipeline  
Tract No. ND-DU-071.000

Dear Robert Ferebee:

As you are aware, Dakota Access, LLC ("Dakota Access") and its agents have been working with you to acquire a right-of-way easement across property that you own an interest in for the proposed Dakota Access Pipeline. The property at issue is identified as follows:

NW¼, W½SW¼, W½E½, all in Section 14, Township 145 North, Range 92 West, Dunn County, North Dakota, more particular described in that Trustees' Deed dated December 22, 1992 from Liberty National Bank and Trust Company and Clifford B. Ferebee as Co-Trustees of the George B. Ferebee Residuary Trust, to Robert Ferebee, recorded as Document Number 183770 in the Office of the Recorder, Dunn County, North Dakota, less and except any conveyances heretofore made.

In the past several months, Right-of-Way Agents representing Dakota Access have contacted you to discuss the purpose and necessity of the easement. The Agents have also identified the proposed location of the pipeline easement, access easement, and temporary workspace in the exhibits to the Easement Agreement previously provided to you, and, to the extent permitted, provided you with an offer of compensation for a pipeline easement. The offer included compensation for the pipeline easement, access easement, temporary workspace, and construction related damages that are associated with the completion of the proposed pipeline. Attached, please find an additional copy of the compensation offer for your review and consideration. We believe the attached offer meets or exceeds the fair market value of the easement, and includes appropriate compensation for any other recoverable damages.

Dakota Access currently plans to begin construction of the pipeline this fall. While Dakota Access prefers to acquire a negotiated easement, given the proposed construction timeline, Dakota Access has now retained counsel to prepare to pursue easements through the courts.



This is Dakota Access's final offer before the matter is turned over to its attorneys. The offer will remain open for one week from the date of this letter. Please accept the offer by executing the enclosed Easement Agreement and returning it to me in the self-addressed stamped envelope. At the conclusion of the seven-day acceptance period, this offer will be withdrawn and shall terminate automatically. At that point, Dakota Access will obtain an appraisal and take the necessary steps to secure an easement across the property through the courts, which may include filing a condemnation action.

Again, Dakota Access would very much like to reach an amicable agreement with you rather than taking legal action. In that regard, we would like to meet with you to discuss the Easement Agreement and the construction process. While the primary goal of such a meeting with you is to negotiate a voluntary easement and discuss damage compensation, another important part of the meeting is to discuss any concerns you may have not previously discussed with the agents regarding the planned pipeline construction.

Dakota Access agents will be contacting you shortly, but you can also contact us at your convenience to discuss your position and concerns regarding a voluntary easement. Please contact Right of Way Supervisor Julie DiMeo at 701-290-4682 or call me directly at 832-633-1655.

Sincerely,

A handwritten signature in blue ink, appearing to read "Micah Rorie".

Micah Rorie  
Senior Right of Way Manager

Enclosures

cc: Daniel J. Hyvl  
Robert Rose  
Lawrence Bender  
Derrick Braaten

**28-32-35. Procedure at hearing.**

The person presiding at a hearing shall regulate the course of the hearing in conformity with this chapter and any rules adopted under this chapter by an administrative agency, any other applicable laws, and any prehearing order. To the extent necessary for full disclosure of all relevant facts and issues, the person presiding at the hearing shall afford to all parties and other persons allowed to participate the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted or conditioned by a grant of intervention or by a prehearing order. A hearing may be conducted in total or in part by making use of telephone, television, facsimile services, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and, if practicable, to see the entire proceeding while it is taking place, and if such use does not substantially prejudice or infringe on the rights and interests of any party.

**28-32-36. Agency to make record.**

An administrative agency shall make a record of all testimony, written statements, documents, exhibits, and other evidence presented at any adjudicative proceeding or other administrative proceeding heard by it. Oral testimony may be taken by a court reporter, by a stenographer, or by use of an electronic recording device. All evidence presented at any proceeding before the administrative agency shall be filed with the agency. A copy of the record of any proceeding before an administrative agency, or a part thereof, must be furnished to any party to the proceeding and to any other person allowed to participate in the proceeding, upon written request submitted to the agency and upon payment of a uniform charge to be set by the agency. Any fee paid to an administrative agency for the record, or a part thereof, shall be paid into the general fund and is appropriated as a refund to the agency for the purposes of defraying the costs of preparing the record. An agency may contract with any person or another agency to prepare a record, or a part thereof, of any proceeding before the agency.

**28-32-37. Ex parte communications.**

1. Except as provided in subsections 2 and 4 or unless required for the disposition of ex parte matters specifically authorized by another statute, an agency head or hearing officer in an adjudicative proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any party, with any person who has a direct or indirect interest in the outcome of the proceeding, with any other person allowed to participate in the proceeding, or with any person who presided at a previous stage of the proceeding, without notice and opportunity for all parties to participate in the communication.
2. When more than one person is the hearing officer in an adjudicative proceeding, those persons may communicate with each other regarding a matter pending before the panel. An agency head or hearing officer may communicate with or receive aid from staff assistants if the assistants do not furnish, augment, diminish, or modify the evidence in the record.
3. Except as provided in subsection 4 or unless required for the disposition of ex parte matters specifically authorized by statute, no party to an adjudicative proceeding, no person who has a direct or indirect interest in the outcome of the proceeding, no person allowed to participate in the proceeding, and no person who presided at a previous stage in the proceeding may communicate directly or indirectly in connection with any issue in that proceeding, while the proceeding is pending, with any agency head or hearing officer in the proceeding without notice and opportunity for all parties to participate in the communication.
4. In an adjudicative proceeding conducted by a hearing officer other than the agency head, counsel for the administrative agency and the agency head, without notice and opportunity for all parties to participate, may communicate and consult regarding the status of the adjudicative proceeding, discovery, settlement, litigation decisions, and other matters commonly communicated between attorney and client, to permit the agency head to make informed decisions. This subsection does not apply after recommended findings of fact, conclusions of law, and orders have been issued,

except counsel for the administrative agency and the agency head may communicate regarding settlement and negotiation after recommended findings of fact, conclusions of law, and orders have been issued.

5. If, before being assigned, designated, or appointed to preside in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while presiding, the person, promptly after being assigned, designated, or appointed, shall disclose the communication in the manner prescribed in subsection 6.
6. An agency head or hearing officer in an adjudicative proceeding who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, or a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte oral communication, and shall advise all parties, interested persons, and other persons allowed to participate that these matters have been placed on the record. Any person desiring to rebut the ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal. A request for rebuttal must be made within ten days after notice of the communication.
7. If necessary to eliminate the effect of an ex parte communication received in violation of this section, an agency head or hearing officer in an adjudicative proceeding who receives the communication may be disqualified, upon good cause being shown in writing to the hearing officer or to the agency. The portions of the record pertaining to the communication may be sealed by protective order issued by the agency.
8. The agency shall, and any party may, report any willful violation of this section to the appropriate authorities for any disciplinary proceedings provided by law. In addition, an administrative agency may, by rule, provide for appropriate sanctions, including default, for any violations of this section.
9. Nothing in this section prohibits a member of the general public, not acting on behalf or at the request of any party, from communicating with an agency in cases of general interest. The agency shall disclose such written communications in adjudicative proceedings.

**28-32-38. Separation of functions.**

1. No person who has served as investigator, prosecutor, or advocate in the investigatory or prehearing stage of an adjudicative proceeding may serve as hearing officer.
2. No person who is subject to the direct authority of one who has served as an investigator, prosecutor, or advocate in the investigatory or prehearing stage of an adjudicative proceeding may serve as hearing officer.
3. Any other person may serve as hearing officer in an adjudicative proceeding, unless a party demonstrates grounds for disqualification.
4. Any person may serve as hearing officer at successive stages of the same adjudicative proceeding, unless a party demonstrates grounds for disqualification.

**28-32-39. Adjudicative proceedings - Findings of fact, conclusions of law, and order of agency - Notice.**

1. In an adjudicative proceeding an administrative agency shall make and state concisely and explicitly its findings of fact and its separate conclusions of law and the order of the agency based upon its findings and conclusions.
2. If the agency head, or another person authorized by the agency head or by law to issue a final order, is presiding, the order issued is the final order. The agency shall serve a copy of the final order and the findings of fact and conclusions of law on which it is based upon all the parties to the proceeding within thirty days after the evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible, in the manner allowed for service under the North Dakota Rules of Civil Procedure.